

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters
(Also, Part I, §§ 401; 1.401(b)-1.)

Rev. Proc. 2003-72

SECTION 1. PURPOSE

.01 This revenue procedure extends until January 31, 2004, the deadline for applying for determination letters for certain pre-approved qualified retirement plans (that is, master and prototype and volume submitter plans). A plan is eligible for this extension only if the plan's GUST¹ remedial amendment period ends on or after September 30, 2003, and before January 1, 2004, and either (i) the plan is amended to comply with GUST within the plan's GUST remedial amendment period, or (ii) a compliance fee of \$250 is paid with the determination letter application.

.02 This revenue procedure also extends the time by which defined contribution plans must be amended to comply with final and temporary regulations under § 401(a)(9) of the Internal Revenue Code, relating to required minimum distributions, until the later of the end of the first plan year beginning on or after January 1, 2003, or the end of the GUST remedial amendment period.

SEC. 2. BACKGROUND

.01 Under § 401(b), plan sponsors have a remedial amendment period in which to adopt plan amendments for GUST. The end of the GUST remedial amendment period is the deadline for making all GUST plan amendments and other plan amendments specifically enumerated in Rev. Proc. 99-23, 1999-1 C.B. 920. The GUST remedial amendment period also applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, that would cause an existing plan to fail to be qualified.

¹ "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

.02 Section 1.401(b)-1(e)(3) of the Income Tax Regulations provides that the filing of a determination letter request on or before the end of a remedial amendment period will extend the period until the expiration of 91 days after (i) the date on which notice of final determination with respect to the request is issued by the Service, the request is withdrawn, or the request is otherwise finally disposed of by the Service; or (ii) the date on which a decision of the United States Tax Court regarding a timely filed petition for declaratory judgment becomes final. Accordingly, if a determination letter application is filed on or before the end of a remedial amendment period, amendments that are included with the application may be submitted in proposed (unadopted) form and need not be adopted before filing the determination letter application. Of course, all amendments needed to qualify the plan must then be adopted by the time described in § 1.401(b)-1(e)(3).

.03 Generally, the GUST remedial amendment period ended on the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001. However, Rev. Proc. 2000-20, 2000-1 C.B. 553, (as modified by Rev. Proc. 2000-27, 2000-1 C.B. 1272; Rev. Proc. 2001-55, 2001-2 C.B. 552; Rev. Proc. 2002-6, 2002-1 C.B. 203; Rev. Proc. 2002-29, 2002-1 C.B. 1176; Rev. Proc. 2002-73, 2002-49 I.R.B. 932; and Notice 2001-42, 2001-2 C.B. 70) provides an extension of the GUST remedial amendment period for employers who, by the end of the GUST remedial amendment period (determined without regard to the extension), have adopted a pre-approved plan or certified their intent to adopt such a plan. If the requirements for the extension are satisfied, the GUST remedial amendment period for the employer's plan will not end before the later of September 30, 2003, or the end of the 12th month beginning after the date on which the Service issues a GUST opinion or advisory letter for the pre-approved plan.

.04 Certain conditions must be met for a plan to be eligible for the extension of the GUST remedial amendment period under Rev. Proc. 2000-20. One of these conditions is that a determination letter application for the plan must be filed within the extended GUST remedial amendment period if the employer is not able to rely directly on a favorable opinion or advisory letter under section 8 of Rev. Proc. 2003-6, 2003-1 I.R.B. 191. In accordance with § 1.401(b)-1(e)(3), employers that request determination letters within the extended GUST remedial amendment period may submit amendments that are in proposed form.

.05 For plans eligible for the extension under Rev. Proc. 2000-20, the end of the GUST remedial amendment period is generally also the deadline for the adoption of plan amendments required by Rev. Rul. 2001-62, 2001-2 C.B. 632, regarding changes to the mortality tables under § 417(e); Rev. Rul. 2002-27, 2002-1 C.B. 925, regarding the incorporation of deemed § 125 compensation in a plan's § 415(c)(3) definition of compensation; and Notice 2001-37, 2001-1 C.B. 1340, regarding changes made by the Community Renewal Tax Relief Act of 2000 to the definitions of compensation in §§ 403(b)(3), 414(s)(2), and 415(c)(3).

.06 Notice 2001-42 provides a remedial amendment period under § 401(b), ending no earlier than the end of the 2005 plan year, in which any needed retroactive remedial

plan amendments for the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, (EGTRRA), must be adopted (the EGTRRA remedial amendment period). The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. For plans eligible for the extension under Rev. Proc. 2000-20, the end of the GUST remedial amendment period is generally also the deadline for the adoption of good faith EGTRRA plan amendments.²

.07 Rev. Proc. 2002-29, as modified by Rev. Proc. 2003-10, 2003-2 I.R.B. 259, provides that defined contribution plans must be amended to the extent necessary to comply with final and temporary regulations under § 401(a)(9). In general, these amendments must be adopted by the end of the first plan year beginning on or after January 1, 2003. However, sponsors of pre-approved plans are required to amend their defined contribution plans by December 31, 2003, and, in the case of master and prototype plans, furnish copies of the amendments to adopting employers. Rev. Proc. 2002-29 also provides that if a plan is timely amended to comply with the final and temporary regulations under § 401(a)(9) and, as a result of the amendment, there is a disqualifying provision under § 401(b), the remedial amendment period with respect to the disqualifying provision will end at the end of the EGTRRA remedial amendment period.

.08 Rev. Proc. 2003-44, 2003-25 I.R.B. 1051, describes the Employee Plans Compliance Resolution System (EPCRS), a comprehensive system of correction programs that permits plan sponsors to correct qualification failures and thereby preserve their plans' tax-favored status.

SEC. 3. EXTENSION OF TIME TO AMEND DEFINED CONTRIBUTION PLANS FOR FINAL AND TEMPORARY REGULATIONS UNDER § 401(a)(9)

.01 The time by which defined contribution plans must be amended to comply with the final and temporary regulations under § 401(a)(9) is extended to the later of the last day of the first plan year beginning on or after January 1, 2003, or the end of the GUST remedial amendment period. This does not extend the December 31, 2003, deadline for sponsors of pre-approved plans to amend their defined contribution plans and, in the case of master and prototype plans, furnish copies of the amendments to adopting employers. As provided in Rev. Proc. 2002-29, if, as a result of a timely plan amendment to comply with the final and temporary regulations under § 401(a)(9), there is a disqualifying provision under § 401(b), the remedial amendment period with respect to the disqualifying provision will end at the end of the EGTRRA remedial amendment period.

.02 Sections 4 through 7, below, extend the time for filing determination letter applications for certain pre-approved plans to January 31, 2004. If a determination

² In some cases, earlier adoption of good faith EGTRRA plan amendments may be necessary in order to avoid a decrease or elimination of benefits protected by § 411(d)(6). See the discussion of § 411(d)(6) in section III of Notice 2001-42.

letter application is filed by January 31, 2004 for a plan that is eligible for the extension, the filing will extend the plan's GUST remedial amendment period as provided in § 1.401(b)-1(e)(3). Accordingly, in this case, plan amendments for the final and temporary regulations under § 401(a)(9) would not have to be adopted prior to the 91st day following issuance of the favorable determination letter.

SEC. 4. EXTENSION OF TIME TO FILE DETERMINATION LETTER APPLICATIONS

.01 An application for a determination letter for an eligible plan that is filed after the end of the plan's GUST remedial amendment period but on or before January 31, 2004, will be deemed to have been filed within the plan's GUST remedial amendment period for purposes of satisfying the conditions for the extension of the GUST remedial amendment period under Rev. Proc. 2000-20 as well as for purposes of § 1.401(b)-1(e)(3). Thus, the filing of a determination letter application by January 31, 2004 for an eligible plan will extend the plan's GUST remedial amendment period through the 91st day following issuance of a favorable determination letter.

.02 A plan is an eligible plan for purposes of this revenue procedure if the plan's GUST remedial amendment period ends on or after September 30, 2003, and before January 1, 2004, and the plan satisfies either (i) the timely amendment requirements of section 5 or (ii) the streamlined compliance requirements of section 6.

SEC. 5. PLANS THAT ARE AMENDED WITHIN THE GUST REMEDIAL AMENDMENT PERIOD

.01 A plan satisfies the timely amendment requirements of this section 5 if the plan is amended to comply with GUST within the plan's GUST remedial amendment period. For this purpose, a plan will be treated as having been amended to comply with GUST within the plan's GUST remedial amendment period if plan amendments that represent a bona fide effort to comply with the requirements of GUST have in fact been adopted (that is, they are not in proposed form) by the end of the plan's GUST remedial amendment period (determined without regard to § 1.401(b)-1(e)(3)).

.02 For purposes of this section, bona fide amendments that are adopted by the end of the GUST remedial amendment period that are made contingent on the receipt of a favorable determination letter will be considered adopted by that date, provided such amendments become effective (or would become effective, but for the Service's request for changes to the amendments or additional amendments) upon receipt of a favorable determination letter without further action by the plan sponsor.

.03 The Service recognizes that employers may discover, after the expiration of the GUST remedial amendment period, that changes to their amendments or other amendments may be needed. Similarly, the Service may request changes to amendments that employers submit or additional amendments in connection with determination letter applications. The fact that, in connection with the determination letter process, the employer adopts or submits in proposed form, or the Service

requests, such changes or such additional amendments will not mean that the amendments the employer adopted by the end of the GUST remedial amendment period did not represent a bona fide effort to comply with the requirements of GUST.

SEC. 6. STREAMLINED COMPLIANCE REQUIREMENTS FOR PLANS THAT ARE NOT AMENDED WITHIN THE GUST REMEDIAL AMENDMENT PERIOD

.01 A plan satisfies the streamlined compliance requirements of this section 6 if (i) the plan does not satisfy the timely amendment requirements of section 5 but would not be a late amender without regard to GUST and the other requirements described in section 2; and (ii) an application for a determination letter for the plan, including payment of a compliance fee of \$250, is submitted by January 31, 2004. This fee is in addition to the determination letter user fee under Rev. Proc. 2003-8, 2003-1 I.R.B. 236, or its successor, if applicable.

.02 An application submitted under this section 6 should have the words "Rev. Proc. 2003-72" written on the top of the determination letter application form (generally Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans). The \$250 compliance fee is to be paid by check or money order, made payable to the U.S. Treasury, and with "Rev. Proc. 2003-72" written on the check or money order. This \$250 compliance fee should **not** be reported on Form 8717, User Fee for Employee Plan Determination Letter Request. The appropriate determination letter user fee under Rev. Proc. 2003-8 or its successor, if applicable, should be paid using a separate check or money order, with the words "User Fee" written on it and accompanied by a completed Form 8717. The completed application, with the two checks and all other required documents should be sent to the address indicated in the instructions for the determination letter application form.

.03 This section applies in lieu of Rev. Proc. 2003-44 to eligible plans that satisfy the requirements of this section, including plans for which determination letters would not have been required had the plans been timely amended to comply with GUST. For example, this section applies in lieu of Rev. Proc. 2003-44 to a standardized M&P plan that has not been amended to comply with GUST by September 30, 2003 (the end of the plan's GUST remedial amendment period), provided an application for a determination letter for the plan, including payment of a compliance fee of \$250, is submitted by January 31, 2004. Rev. Proc. 2003-44 applies to late amended or filed plans that are not eligible plans or for which determination letter applications are not filed by January 31, 2004.

SEC. 7. EXAMPLES

.01 Assume an employer's extended GUST remedial amendment period under Rev. Proc. 2000-20 ends on September 30, 2003, and the employer is required to file a determination letter application by then in order to meet the conditions for the extension. Provided the employer adopts its GUST-restated plan by September 30, 2003, a determination letter application for the plan that is filed by January 31, 2004, will be

deemed to have been filed by September 30, 2003. Therefore, the plan will have met the conditions for the extended GUST remedial amendment period under Rev. Proc. 2000-20 and the period will be extended as provided in § 1.401(b)-1(e)(3). Therefore, assuming the issuance of a favorable determination letter, the GUST remedial amendment period for the plan will remain open through the 91st day following the issuance of the letter. Thus, the employer will not be required to adopt plan amendments for the final and temporary regulations under § 401(a)(9), or any additional amendments required to be adopted as a condition of the favorable determination letter, prior to the 91st day following issuance of the letter.

.02 Assume the same facts, except the employer fails to adopt its GUST-restated plan by September 30, 2003. Provided the employer files a determination letter application by January 31, 2004, and includes payment of the \$250 compliance fee required by section 6, the application will be deemed to have been filed by September 30, 2003, regardless of whether the plan submitted with the application is in adopted or proposed form. Therefore, the plan will have met the conditions for the extended GUST remedial amendment period under Rev. Proc. 2000-20 and the period will be extended as provided in § 1.401(b)-1(e)(3). Therefore, assuming the issuance of a favorable determination letter, the GUST remedial amendment for the plan will remain open through the 91st day following the issuance of the letter. Thus, the employer will not be required to adopt its proposed GUST amendments (if applicable), plan amendments for the final and temporary regulations under § 401(a)(9), or any additional amendments required to be adopted as a condition of the favorable determination letter, prior to the 91st day following issuance of the letter.

SEC. 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-20, Rev. Proc. 2002-29, and Rev. Proc. 2003-44 are modified.

SEC. 9. EFFECTIVE DATE

This revenue procedure is effective September 22, 2003.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Flannery may be reached at 1-202-283-9888 (not a toll-free number).